

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JONATHAN JOSE CASANOVA,

Plaintiff,

-against-

CORRECTION OFFICER MALDONADO, et
al.,

Defendants.

ORDER

17-CV-01466 (PMH)

PHILIP M. HALPERN, United States District Judge:

On March 9, 2021, the Pro Se Office received and docketed a document styled as a motion for default. (Doc. 93). Plaintiff argues therein that Defendants’ motion was untimely and that, during the November 4, 2020 conference call with the Court, the Court advised Plaintiff “that[] he did not have to [a]nswer the Defendant[’]s motion for summary [sic] judgment in these civil proceedings” (*Id.* at 1). Defendants, construing the submission as Plaintiff’s opposition to the pending motion for summary judgment, requested an extension of time within which to serve and file a reply brief. (Doc. 94).

Turning first to Plaintiff’s motion for default, the relief sought is DENIED. Under the briefing schedule set by the Court, Defendants were required to serve and file their moving papers on January 29, 2021. (Doc. 86; *see also* Docs. 87-92). The fact that Plaintiff received the motion on February 8, 2021 (Doc. 93 at 1) does not mean that Defendants failed to comply with the schedule set by the Court. Moreover, the Court did not advise Plaintiff that he “did not have to” respond to Defendants’ motion for summary judgment; rather the Court noted during the conference that because Plaintiff is proceeding *pro se*, it would not require him to respond to Defendants’ 56.1 Statement. Should Plaintiff oppose the relief Defendants seek, he is encouraged to file a response.

As for Defendants' request for an extension, the relief sought is GRANTED. In light of Plaintiff's confusion as to whether he should serve and file an opposition to Defendants' motion for summary judgment, the schedule is extended as follows:

- Plaintiff shall serve and file his opposition to Defendants' motion for summary judgment on or before April 9, 2021; and
- Defendants shall serve and file their reply, if any, on or before April 16, 2021.

Should Plaintiff fail to serve and file an opposition to Defendants' motion for summary judgment, the Court will construe—as Defendants have—the motion for default and its accompanying memorandum of law¹ (Doc. 93; Doc. 93-1) as Plaintiff's opposition.

The Clerk of the Court is respectfully directed to terminate the motion sequences pending at Doc. 93 and Doc. 94, and to mail a copy of this Order to Plaintiff. Defendants are also directed to file the affidavit(s) of service reflecting service of the summary judgment papers on Plaintiff by 5:00 p.m. on March 12, 2021.

SO ORDERED:

Dated: White Plains, New York
March 10, 2021



PHILIP M. HALPERN
United States District Judge

¹ The memorandum of law (Doc. 93-1) argues that Defendants failed to make the showing required for summary judgment on a claim for retaliation under the First Amendment.